

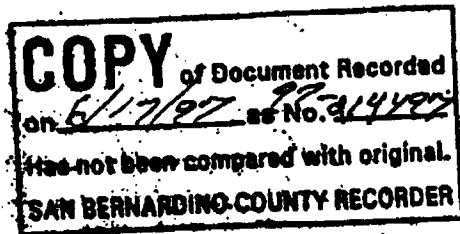
PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:
CHICAGO TITLE COMPANY

AND WHEN RECORDED MAIL TO:
CAL ENVIRONMENTAL PROTECTION

245 W. BROADWAY #350
LONG BEACH, CA 90802

7222153-K32



PG	TYPE	FEE	ST FEE	ADD RM	CY	ADD RF	PEN PR	PCOR
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NON ST	LN	SVY	CIT-CO	TRANS TAX	NO FEE	CHRG	EXAM	

SPACE ABOVE FOR RECORDER'S USE ONLY

COVENANT TO RESTRICT USE OF PROPERTY

Title of Document

**THIS AREA FOR
RECORDER'S
USE ONLY**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

72021537532
RECORDING REQUESTED BY:

Attention: Mr. Lee R. Redmond III
Kaiser Ventures Inc.
3633 E. Inland Empire Blvd., Suite 850
Ontario, California 91764

WHEN RECORDED MAIL TO:

Attention: Peter Garcia
California Environmental Protection Agency
Department of Toxic Substances Control
245 West Broadway, Suite 350
Long Beach, California, 90802

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

(Re: a Portion of the Kaiser Ventures Inc. Mill Site, Operable Unit No. 1,
West Valley Material Recovery Facility "MRF" Parcel)

This Covenant and Agreement ("Covenant") has an effective date of June 11, 1997, by and between Kaiser Ventures Inc. and its predecessors and assigns (the "Covenantor"), the current owner of the subject property to be restricted herein, and the California Environmental Protection Agency, Department of Toxic Substances Control (the "Department"), the government agency with statutory oversight responsibility with respect to hazardous substances response actions and hazardous waste facility regulation at the subject property. The Covenantor and Department may be collectively referred to herein as the "Parties." This Covenant is made with reference to the following facts:

- A. The Restricted Property (as defined below) is a limited portion of the site of the former World War II era Kaiser Steel Mill (13425 San Bernardino Avenue, Fontana), located in the area now generally bounded by Etiwanda Avenue on the west, Whittram Avenue on the north, Cherry Avenue on the east, and Valley Blvd. on the south, County of San Bernardino, State of California (the "Site").
- B. The limited area of the Site to be restricted herein (San Bernardino County Parcel #1 of Parcel Map No. 14400, "Restricted Property"), totaling approximately 22 acres, is more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference. In the past, Covenantor's predecessor in interest (Kaiser Steel Corporation) used the Restricted Property as storage for steel mill recyclable materials and by-products such as basic oxygen furnace filter cake, furnace dust, mill scale, coke, slag and coal tar.
- C. On August 22, 1988, the Department's predecessor in interest (California Department of Health Services) issued to Covenantor's predecessor in interest (Kaiser Steel Corporation) a Consent Order pursuant to California Health and Safety Code ("H&S Code") §§ 205, 25355.1(a)(1)(B), and 25355.5(a)(1)(C). The purpose of this Consent Order was "to ensure that any release or threatened release of a hazardous substance or hazardous waste to the air, soil, surface water and ground water at or from the Facility [i.e., the Site] is thoroughly investigated and that appropriate remedial actions are taken." In furtherance of the Consent Order, pursuant to the Department's applicable statutory authority referenced therein and elsewhere, the Department is requiring this Covenant as part of the remedial actions at the Site.

As of 1997, land within a two (2) mile radius of the Restricted Property supports a mixture of primarily industrial and low-density residential uses. On approximately 460 acres to the east of the Restricted Property, there is under construction a motor sport complex. There is also a considerable amount of vacant, currently unproductive agricultural land near the Site for which industrial development is planned. The nearest residences to the Site are located

approximately 3,000 feet to the northwest of the center of the Restricted Property, with the nearest sensitive population being an elementary school located 8,000 feet to the northeast of the border of the Restricted Property.

All or a portion of the surface and subsurface soils of the Restricted Property contain hazardous substances and hazardous materials as defined in H&S Code §25260 ("Hazardous Substances") which include or may include one or more of the metal and polynuclear aromatic hydrocarbon contaminants of concern, as follows: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-c,d)pyrene, naphthlene, phenanthrene, pyrene, beryllium, cadmium, chromium, cobalt, copper, molybdenum, nickel, thallium and zinc.

- F. Covenantor, in compliance with applicable law, and under the supervision and authority of the Department, is undertaking a response action ("Response Action") at several areas of the Site pursuant, which response action Covenantor asserts is in compliance with applicable requirements of the National Contingency Plan (40 C.F.R. § 300, *et. seq.*). During implementation of the *Draft Remedial Action Plan, Tar Pits Area, Kaiser Resources, Fontana, California, August 1993* ("RAP"), it became apparent that remedial goals chosen in the RAP were not practical. To provide a basis for establishing revised cleanup goals, Sigma Plus Environmental, Inc., on behalf of Kaiser Ventures Inc., completed a *Revised Human Health Risk Assessment for the Materials Recovery Facility Operable Unit No. 1 Fontana, California, March 3, 1997* ("HRA"). The HRA concluded that much of the residual soil contaminants at the Restricted Property are within a discretionary, acceptable range of risk pursuant to Title 40, Code of Federal Regulations (40 C.F.R.), Section 300.430(e)(2)(I)(A)(2). On May 14, 1997, the Department approved the HRA and incorporated such in the Amended RAP ("Amended RAP").
- G. For chemically affected soils on the Restricted Property not meeting 40 C.F.R. requirements, the Response Action includes installing and maintaining, a concrete cap and a soil cement cap (collectively "Cap") over the Hazardous Substances that remain in place ("Capped Portions"), as depicted in Exhibits "B" and "C" hereto. The concrete cap is "Parcel A" on Exhibit "B" hereto, with the soil cement cap being "Parcel B" on Exhibit "B" hereto. The Cap construction is more particularly described in Exhibit "C" also. The operation and maintenance ("O&M") of the Cap is pursuant to an O&M Manual incorporated into the O&M Agreement between Covenantor and the Department executed concurrently herewith. While all conditions and restrictions herein apply to the entire Restricted Property, certain additional terms, where identified as such, apply to the Capped Portions.
- H. This Response Action for the Restricted Property is being done in compliance with the California Environmental Quality Act (Pub. Resources Code, §21000 *et. seq.*, "CEQA"). The Department completed an Initial Study and then a Negative Declaration which was ultimately approved. Finally, the Department filed a Notice of Determination, completing the CEQA process on May 21, 1997.
- I. The Amended RAP requires this deed restriction, remediation of the soils to a level consistent with industrial end land use, and construction, monitoring, and maintenance of the Cap. As of this time, the Department requires no further Response Action for the Restricted Property, other than implementation of the Amended RAP and Operation and Maintenance ("O&M") of the Capped Portions.
- J. This Covenant does not nullify or otherwise modify any releases from liability granted by the Department pursuant to H&S Code §§ 25364 and 25364.1 or other law of similar import.
- K. Pursuant to California Civil Code §1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in H&S Code §25260.

ARTICLE I PARAMETERS OF COVENANT

1. Restrictions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Restricted Property and every portion thereof shall be proved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every of the Restrictions: (a) shall run with the land, (b) shall inure to the benefit of and pass with each and every portion of the Restricted Property, (c) shall apply to and bind the respective successors in interest to the Restricted Property, (d) are for the benefit of, and shall be

enforceable by, the Department, (e) are imposed upon the entire Restricted Property unless expressly stated as applicable only to a specific portion thereof.

Concurrence of Owners/Occupants. Each and every owner ("Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Restricted Property) and occupants ("Occupants" shall mean lessees or other possessors of any portion of the Restricted Property whose occupancy has a significant likelihood of violating the Restrictions) shall be deemed to be in accord with this Covenant and shall further be deemed to unconditionally agree, for and among themselves, their heirs, successors, and assignees (and for any agents thereof), to the Restrictions as herein established (such that their interest(s) and/or possessory rights in the Restricted Property are taken subject to such Restrictions). Pursuant to California Civil Code §1471(b), all successive owners of the land are expressly bound hereby for the benefit of the covenantee(s) herein.

ARTICLE II RESTRICTIONS

3. Incorporation into Deeds and Leases. Owner agrees that the Restrictions set forth herein shall be incorporated by reference in each and all deeds, and leases to Occupants, for any portion of the Restricted Property.

4. Restrictions on Use. Owner agrees to restrict the use of the Restricted Property in accordance with the restrictions set forth herein in order to protect the present and future public health and safety from potential harm to persons which may result from hazardous substances which exist on the Restricted Property. The Restrictions provided herein shall apply only to the Restricted Property. Owner agrees not to use the Restricted Property for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as permanently- occupied residential human habitation.
- (b) A long-term care hospital for humans. Nothing herein shall restrict use of the Restricted Property for any infirmary, medical aid station, or emergency medical care facility where there is no intent for any patient to remain in such facility for more than 24 hours.
- (c) A traditional public or private school for persons under 21 years of age. Nothing herein shall restrict use of the Restricted Property for any specialized training programs for adults related to then-existing facilities on the Restricted Property or the Site.
- (d) A day care center for children.

Additionally, Owner agrees to provide to the Department written notice at least fourteen (14) days prior to any excavations in the Restricted Property which present a significant likelihood of disturbing the Hazardous Substances in the Restricted Property.

5. Non-Interference with Cap. Owner agrees:

- (a) No activities which will disturb the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall be permitted on the Capped Portions without prior review and approval by the Department.
- (b) All uses and development of the Capped Portions shall preserve the integrity of the Cap.
- (c) Any proposed alteration of the Cap shall require written approval by the Department, except for the addition of non-invasive surface materials ("Non-Invasive Surface Materials" means any materials, including soil, asphalt, concrete, and structures, placed upon or over the Cap which does not disturb the Cap, or impair its integrity or operation).
- (d) Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any disturbance to the Cap which could affect the ability of the Cap to contain subsurface Hazardous Substances in the Capped Portion to operate properly, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance(s) and the completion of any repairs.
- (e) Owner shall make all repairs to the Cap pursuant to the O&M Agreement.

6. Notice in Agreements. Owner shall furnish in writing to Occupants and/or to the Owner's successor in interest to any part of the Restricted Property, as either part of another written agreement (e.g., a lease), or as a stand alone instrument, the following statement:

"All or a portion of the land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists and does not address the liability of any party."

7. Conveyance of Restricted Property. Owner shall provide notice to the Department not later than thirty (30) days prior to any conveyance of any ownership interest in the Restricted Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, by administrative order, or by reason of this Covenant.

8. Access for Implementing O&M. Covenantor agrees that all Owners and Occupants shall forever grant reasonable right of entry and access, to the entity or person responsible for implementing the O&M Agreement or any portion thereof, for the purpose of implementing such O&M Agreement.

ARTICLE III ENFORCEMENT

9. Enforcement. Failure of the Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Owner to cease any activity or use which violates any of the Restrictions and/or modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Restricted Property) constructed in violation of the Restrictions.

ARTICLE IV VARIANCE, TERMINATION, AND TERM

10. Variance. Owner and/or, with the Owner's written consent, any Occupant of the Restricted Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&S Code §25233 and/or other appropriate statutory authorization(s) then in effect.

11. Termination. Owner and/or, with the Owner's written consent, any Occupant of the Restricted Property or any portion thereof may apply to the Department for a termination of the Restrictions or other term of this Covenant as they apply to all or any portion of the Restricted Property. Such application shall be made in accordance with H&S Code §25234 and/or other appropriate statutory authorization(s) then in effect.

12. Term. Unless ended in accordance with the "termination" paragraph above, by law, or by other valid method, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

13. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Site, Restricted Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. In addition, nothing in this Covenant shall be deemed to constitute a covenant, encumbrance, or restriction on the use of any property other than the Restricted Property.

14. Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

15. Code References. All references to Code sections include successor provisions, if any.

16. Department References. All references to the Department include successor agencies/departments or other successor entity.

17. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

18. Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid certified, return receipt requested:

To Covenantor: Kaiser Ventures Inc.
3633 E. Inland Empire Boulevard, Suite 850
Ontario, California 91764
Attention: Lee R. Redmond III

To Department: Department of Toxic Substances Control
Region 4, Site Mitigation Cleanup Operations
245 West Broadway, Suite 350
Long Beach, California 90802
Attention: Peter Garcia

Any party may change its address or the individual to whose attention a notice is to be sent by giving such written notice in compliance with the provisions of this section.

19. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"COVENANTOR"

KAISER VENTURES INC.
a Delaware corporation


Date: June 10, 1997

By: 
Gerald A. Fawcett
President

"DEPARTMENT"

CALIFORNIA ENVIRONMENTAL PROTECTION
AGENCY, DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Date: June 13, 1997

By: 
Hamid Saebfar, Chief
Site Mitigation Cleanup Operations
Southern California Branch
Region 4

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5807

State of California
County of San Bernardino

On June 10, 1997 before me, Patricia M. Williams Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
personally appeared Gerril A. Fawcett
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Patricia M. Williams
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER
President
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
- ☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Covenant To Restrict Use of Property / Environmental Restriction
TITLE OR TYPE OF DOCUMENT

5 pgs. w/ 6 exhibits
NUMBER OF PAGES

- 0 -
DATE OF DOCUMENT

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
Kaiser Ventures Inc.

- 0 -
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

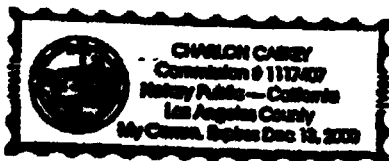
State of CALIFORNIA

County of LOS ANGELES

On 16 JUNE 1997 before me, CHARLON CASKEY - Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared HAMID SAEFAR
Name(s) of Signer(s)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Charlon Caskey
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Copied to Restrict Use of Property Environmental Restriction
 Document Date: 6-13-97 Number of Pages: 5 1/2
inhibits

Signer(s) Other Than Named Above: _____

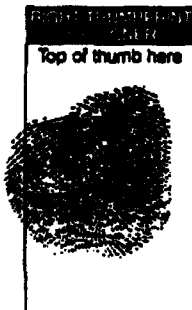
Capacity(ies) Claimed by Signer(s)

Signer's Name: HAMID SAEFAR

- ☒ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

State of California



Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

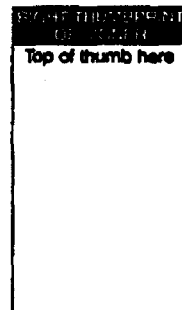
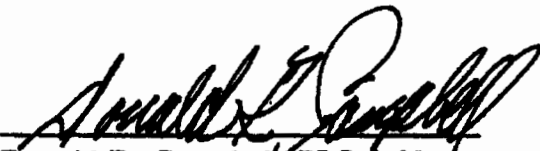


EXHIBIT "A"
MATERIALS RECOVERY FACILITY
PARCEL DESCRIPTION

P.N. 3-4060

Parcel 1 of Parcel Map No. 14400 in the County of San Bernardino, State of California
as per map recorded in Book 182, Pages 87 through 89 inclusive of
Parcel Maps in the office of the County Recorder of said County.




Donald R. Campbell, PLS 5409 5-15-97 Date
Expires Sept. 30, 2000

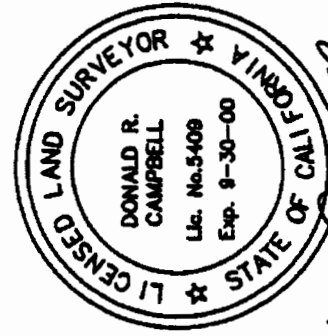
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EXHIBIT OF PARCEL 1, PM 14400

NAPA STREET

PARCEL 1
PARCEL MAP NO. 14400

SCALE: 1"=200'



Donald R. Campbell
DONALD R. CAMPBELL, PLS 5409
EXP. DATE 9/30/00

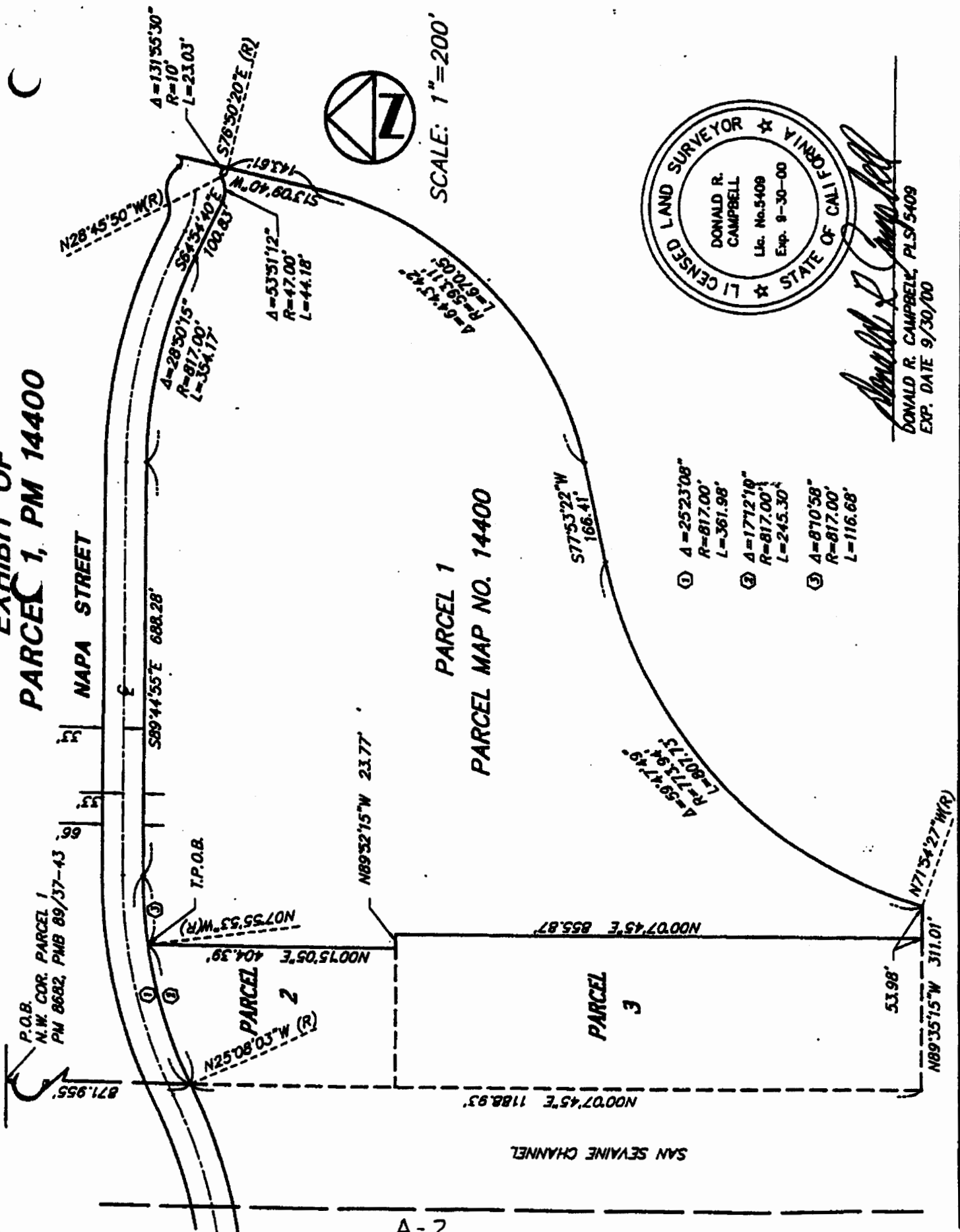


EXHIBIT "B"



SCALE: 1" = 200'

N.W. CORNER
PARCEL 1
PM 14400
P.O.C.

PARCEL "A"

NAPA STREET

PARCEL 2

P.O.B.
PARCEL "A"

PARCEL 1

PARCEL MAP NO. 14400

P.M.B. ____/____/____

PARCEL 3

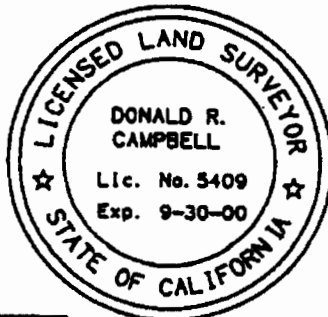
PARCEL
"A"
1.008 AC.

PARCEL
"B"
2.286 AC.

P.O.B.
PARCEL
"B"

S89°33'06"E
25.00'

P.O.C.
PARCEL "B"
S.E. CORNER
PARCEL 3
PM 14400



ENGINEERING ASSOCIATES

Mod P.O. Box 9087 • 92412
Phone (909) 884-6004 FAX (909) 889-8143
225 East Airport Drive, San Bernardino, California

DONALD R. CAMPBELL, PLS 5409
EXP. DATE 9/30/00

**LEGAL DESCRIPTION
MATERIAL RECOVERY FACILITY
ENVIRONMENTAL REMEDIATION AREAS**

P.N. 3-6047
Sheet 1 of 2

That portion of Parcel 1 of Parcel Map No. 14400 in the County of San Bernardino, State of California as per map recorded in Book 182 Pages 87 through 89 of Parcel maps in the Office of the County Recorder of said County described as follows:

Parcel "A"

COMMENCING at the northwest corner of Parcel 1 of said Parcel Map No. 14400 said point also being on a non-tangent curve concave southerly having a radius of 817.00 feet, a radial bearing to said point bears North 07°55'53" West; thence easterly along the northerly line of said Parcel 1 and the arc of said curve 116.68 feet through a central angle of 08°10'58"; thence South 89°44'55" East 320.21 feet; thence leaving the northerly line of said Parcel 1 South 00°15'05" West 263.80 feet to the POINT OF BEGINNING; thence South 89°44'55" East 66.00 feet; thence South 00°15'06" West 120.00 feet; thence South 89°44'55" East 134.00 feet; thence South 00°15'05" West 180.00 feet; thence North 89°44'55" West 200.00 feet; thence North 00°15'05" East 180.00 feet to the POINT OF BEGINNING.

Parcel "A" contains - 1.008 acres more or less.

Together with:

Parcel "B"

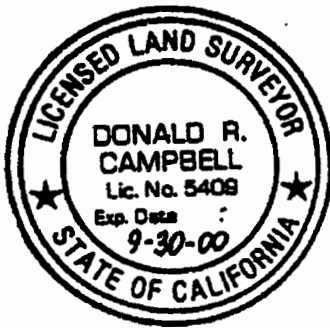
COMMENCING at the southwest corner of Parcel 1 of said Parcel Map No. 14400; thence along the westerly line of said Parcel 1 North 00°06'54" West 145.00 feet; thence leaving the westerly line of said Parcel 1 South 89°53'06" East 25.00 feet to the POINT OF BEGINNING; thence along a line parallel with and 25.00 feet easterly of the westerly line of said Parcel 1 North 00°06'54" East 425.00 feet; thence leaving said parallel line South 89°53'06" East 310.00 feet; thence South 00°06'54" West 157.00 feet;

LEGAL DESCRIPTION CONTINUED

Sheet 2 of 2

thence South 41°57'37" West 359.76 feet; thence North 89°53'06" West 70.00 feet to the
POINT OF BEGINNING.

Parcel "B" contains - 2.286 acres more or less.

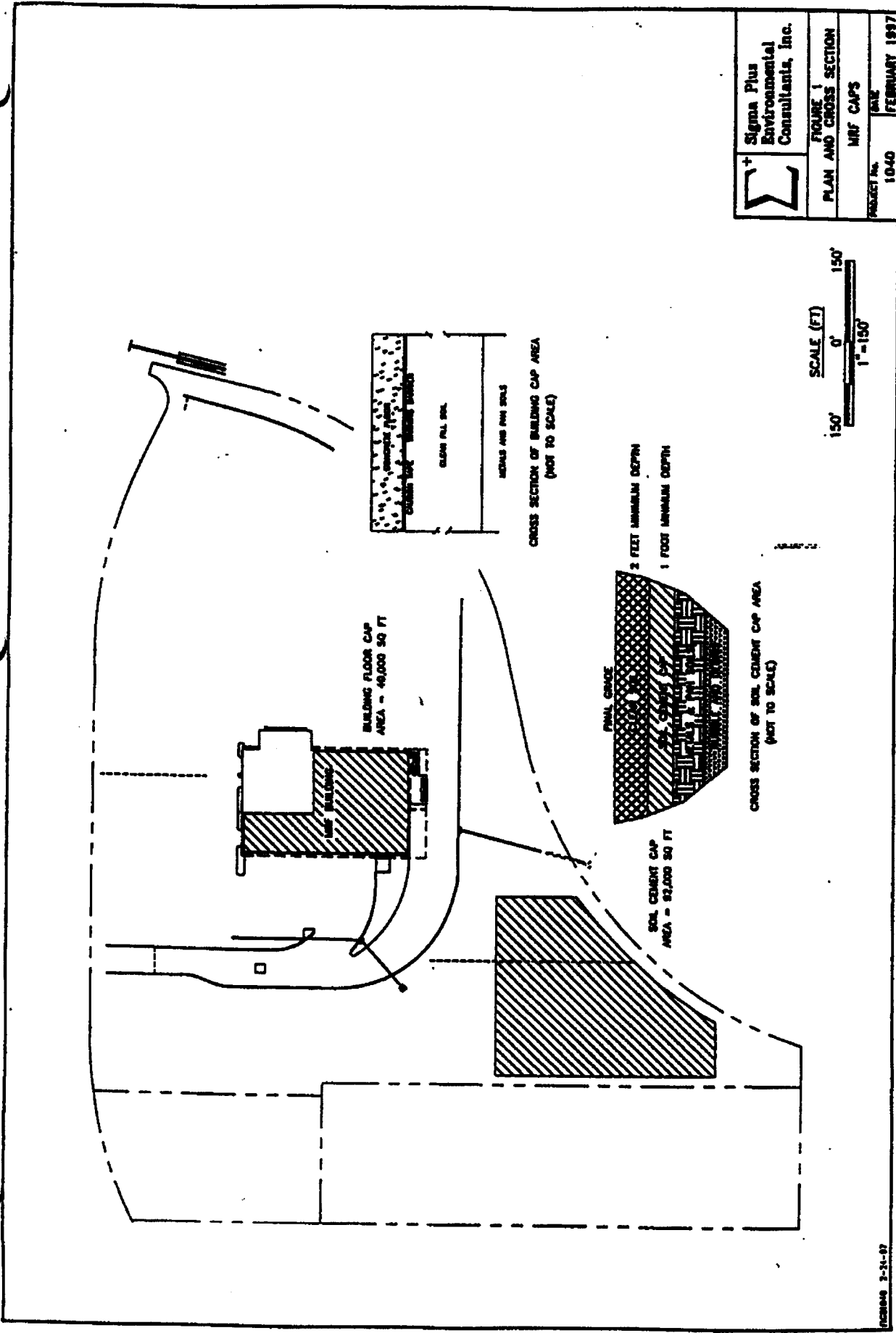




Donald R. Campbell, PLS 5409

Expires 9/30/00

5-27-97
Date

(12\legal\36047.522)



 Sigma Plus Environmental Consultants, Inc.	
FIGURE 1	
PLAN AND CROSS SECTION	
MRF CAPS	
PROJECT No.	DATE
1040	FEBRUARY 1997